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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 OAKLAND DIVISION

20 EPIC GAMES, INC.,
Plaintiffs, Counter-defendant

21 v.

22 APPLE INC.,
Defendant, Counterclaimant

23 IN RE APPLE IPHONE ANTITRUST
LITIGATION

24 DONALD R. CAMERON, *et al.*,
Plaintiffs,

v.

25 APPLE INC.,
Defendant

26 Case No. 4:20-cv-05640-YGR-TSH
Case No. 4:11-cv-06714-YGR-TSH
Case No. 4:19-cv-03074-YGR-TSH

27 **DECLARATION OF ETHAN DETTMER IN
SUPPORT OF ADMINISTRATIVE
MOTIONS TO SEAL JOINT LETTER
BRIEFS AND EXHIBITS**

28 Hon. Thomas S. Hixson

1 Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
 3 of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for
 4 Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly
 5 proprietary and confidential information, based on my personal experience representing Apple.¹ I
 6 have personal knowledge of the facts stated below and, if called as a witness, I could and would testify
 7 competently thereto. I submit this declaration in support of Plaintiffs’ administrative motions to file
 8 under seal: the Joint Discovery Letter Brief Regarding Cue and Federighi Depositions and Supporting
 9 Exhibits, *Epic*, Dkt. 261, the Joint Discovery Letter Brief Regarding Cook Deposition, *Epic*, Dkt. 262,
 10 and Supporting Exhibits A to L to the Joint Discovery Letter Brief Regarding Cue and Federighi
 11 Depositions, *Epic*, Dkt. 248.

12 2. Although Plaintiffs’ Administrative Motion to File Under Seal Supporting Exhibits A
 13 to L to the Joint Discovery Letter Brief Regarding Cue and Federighi Depositions references only the
 14 documents filed in support of the joint discovery letter brief regarding Messrs. Cue and Federighi, *see*
 15 *Epic*, Dkt. 248, Plaintiffs also attached to that filing the exhibits filed in support of the joint discovery
 16 letter brief regarding the deposition of Mr. Cook. This declaration therefore addresses the sealing of
 17 those exhibits as well.

18 3. The request for relief is narrowly tailored and necessary to the confidentiality of
 19 information in certain documents described below.

20 4. In determining whether to permit documents to be filed under seal, courts in the Ninth
 21 Circuit apply two separate standards: (1) the “compelling reason” test for sealing information in
 22 connection with motions for a determination on the merits of a claim or defense; and (2) the less-

24 ¹ Courts in this District routinely grant motions to seal on the basis of declarations of counsel
 25 submitted pursuant to Local Rule 79-5. *See, e.g., In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-
 26 1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD,
 27 Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD,
 28 Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of
 proprietary information, but if the Court deems this declaration insufficient, Apple respectfully
 requests that it be permitted to file a further declaration supporting filing under seal.

1 restrictive “good cause” test for sealing information in connection with non-dispositive filings.
 2 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006); *Center for Auto*
 3 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016). Here, the less-restrictive good cause test
 4 applies, because the underlying dispute is non-dispositive.

5 5. Apple operates in an intensely competitive marketplace. It occupies a unique position
 6 as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate
 7 concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive,
 8 proprietary information in order to gain competitive advantage. As such, Apple takes extensive
 9 measures to protect the confidentiality of its proprietary information.

10 6. The Court has “broad latitude” “to prevent disclosure of materials for many types of
 11 information, including, *but not limited to*, trade secrets or other confidential research, development, or
 12 commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)
 13 (emphasis in original).

14 7. Apple has carefully reviewed the joint discovery letter briefs themselves, as well as the
 15 numerous exhibits and depositions testimony submitted in connection thereto. Apple offers narrow
 16 and carefully tailored highlighting to protect its confidential business interests.

17 8. Apple seeks to seal information regarding its internal chain of command and
 18 decisionmaking process. Protection of that information is warranted to prevent competitors or
 19 counterparties from taking advantage of that process to obtain a strategic advantage against Apple in
 20 future negotiations or discussions.

21 9. Apple seeks also to seal internal strategic decisionmaking discussions that, if disclosed,
 22 could reveal to competitors Apple’s reasoning for adopting, or not adopting, certain business initiatives.
 23 The public disclosure of such information would cause Apple economic harm and put it at competitive
 24 disadvantage. See *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016),
 25 cert. denied sub nom. *FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016) (finding there was a
 26 compelling reason for sealing when records contained business information that could be used to harm
 27 a litigant’s competitive standing).

1 10. Apple seeks also to redact certain deposition testimony related to the same subject
 2 described above. In doing so, Apple has endeavored to tailor the redactions to cover only information
 3 that properly qualifies as confidential business information.

4 11. Furthermore, in accordance with the Court's direction that the parties file only "relevant
 5 excerpts of discovery requests and responses," Apple proposes to redact those interrogatory responses
 6 (Exhibit 1) not cited to by the parties in their joint submissions.

7 12. In addition to the competitive harms posed by public availability of these documents,
 8 public disclosure of this information would risk providing assistance to competitors and third parties
 9 seeking to unlawfully access or steal data. Apple takes many steps, and undertakes substantial efforts,
 10 to safeguard information—including its trade secrets and data of its customers and developers who use
 11 Apple's technology—and keeping those efforts confidential is important to their effectiveness.

12 13. The information Apple seeks to protect is foundational to its business, and Apple has
 13 exerted great effort and undertaken substantial expense to protect such information. Apple has
 14 narrowly tailored its sealing request so as to maximize the public's access to court records without
 15 jeopardizing Apple's business interests.

Document	Redacted Material
Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Confidential business information discussed in internal documents and deposition testimony, including information regarding Apple's internal structure, strategic decisionmaking, and allocation of responsibilities
Exhibit 1 to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Material not cited to or relied on by either party
Exhibit A to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Sealed in its entirety
Exhibit B to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Email addresses of individual recipients and senders
Exhibit C to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Addressees and body of email discussing business strategy and decisionmaking

1	Exhibit D to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Sealed in its entirety
2	Exhibit E to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Addressees and body of email discussing business strategy and decisionmaking
3	Exhibit F to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Addressees and body of email discussing business strategy and decisionmaking
4	Exhibit G to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Sealed in its entirety
5	Exhibit H to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Sealed in its entirety
6	Exhibit I to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Page 45 Page 182, lines 1–3 Page 183, lines 20–24 Page 184–88 Page 201 Page 289, lines 7–11 Page 334 Page 335, lines 1–12
7	Exhibit J to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Page 13 Page 14, lines 1–23 Page 65, lines 1–6, 14–25 Page 112, lines 7–25 Page 113 Page 114, lines 1–17, 24–25 Page 138, lines 1–8, 22–23 Page 139, lines 1–25 Page 140–41 Page 177, lines 1–10, 21–25 Page 178 Page 196–97 Page 292, lines 3–25 Page 293, lines 1–16, 20–25 Page 302–03
8	Exhibit K to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Page 107 Page 369 Pages 404–05
9	Exhibit L to Joint Discovery Letter Brief Regarding Cue and Federighi Depositions	Page 24, lines 1–11 Page 26, line 5 Pages 113–15 Page 379

	Page 380, lines 1–5 Page 397, lines 1–3, 16–25 Pages 398–400 Page 401, lines 1–24 Page 403, lines 6–10 Page 404, lines 14–25 Pages 405–09 Page 410, lines 1–2, 15–25 Page 412, lines 10–25
Joint Discovery Letter Brief Regarding Cook Deposition	Confidential business information discussed in internal documents and deposition testimony, including information regarding Apple's internal structure, strategic decisionmaking, and allocation of responsibilities.
Exhibit C to Joint Discovery Letter Brief Regarding Cook Deposition	Addressees and body of email discussing business strategy and decisionmaking, personal information about third party
Exhibit D to Joint Discovery Letter Brief Regarding Cook Deposition	Addressees and body of email discussing business strategy and decisionmaking, personal information about third party
Exhibit E to Joint Discovery Letter Brief Regarding Cook Deposition	Addressees and body of email discussing business strategy and decisionmaking, personal information about third party
Exhibit F to Joint Discovery Letter Brief Regarding Cook Deposition	Page 286, lines 1–4, 6–10, 20–21, 23–24 Page 289, lines 7–11
Exhibit G to Joint Discovery Letter Brief Regarding Cook Deposition	Page 26, line 5 Page 118, lines 3–4, 10, 13–25 Pages 119–20

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on January 25, 2021, at San Anselmo, California.

/s/ Ethan Dettmer

Ethan Dettmer